

### REMARKS

This Amendment is submitted in reply to the Final Office Action mailed on August 20, 2009. A Petition for a three month extension of time is submitted herewith this Amendment. The Commissioner is hereby authorized to \$1,110.00 for the Petition for a three month extension of time and any additional fees that may be required or credit any overpayment to Deposit Account No. 02-1818.. If such a withdrawal is made, please indicate the Attorney Docket No. 3712036-00707 on the account statement.

Claims 1-6 and 8-20 are pending in this application. In the Office Action, Claim 19 is rejected under 35 U.S.C. §112, second paragraph. Claims 1-6 and 8-20 are rejected under 35 U.S.C. §103(a). In response, Claims 1, 9-10, 15 and 19 have been amended. The amendments do not add new matter. In view of the amendments and/or for the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claim 19 is rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Patent Office asserts that Claim 19 recites the limitation "the coated fat-based confectionery" in line 2, but that there does not exist sufficient antecedent basis for "the *coated* fat-based confectionery." See, Office Action, page 2, lines 11-17 (emphasis in original). In response, Applicants have amended Claim 19 to delete the word "coated" from the claim. The amendment does not add new matter and was made solely for clarification purposes and not for the purpose of avoiding any prior art. For at least the reasons set forth above, Applicants respectfully submit that Claim 19 fully complies with the requirements of 35 U.S.C. §112, second paragraph.

Accordingly, Applicants respectfully request that the rejection of Claim 19 under 35 U.S.C. §112, second paragraph, be reconsidered and withdrawn.

In the Office Action, Claims 1-4, 6-8 and 18-19 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,802,924 to Woznicki et al. ("*Woznicki*"). In view of the amendments and/or for at least the reasons set forth below, Applicants submit that *Woznicki* is deficient with respect to the present claims.

Currently amended independent Claim 1 recites a heat shape stable and heat resistant fat-based confectionery product comprising a film coating having a thickness from 1 micrometer to 1 millimeter and a supplementary ingredient selected from the group consisting of minerals,

vitamins, prebiotics, probiotics, and combinations thereof. The amendment does not add new matter. The amendment is supported in the specification at, for example, page 6, [0029]. Applicants have found that the presently claimed film-coated fat-based confectionery products can be dispersed into and/or scattered onto a food product such as chocolate, baked products, etc. The products do not deform when submitted to temperatures higher than ambient, the coating does not crack upon heating, and color does not bleed from the coating into the food product. See, Preliminary Amendment, page 4, [0014]. Further, by providing a supplementary ingredient in the film, Applicants are able to deliver beneficial ingredients to a consumer of the products of the present disclosure.

Moreover, the present claims include film coatings that are designed to retain the shape of the product that is being coated when the product is exposed to heat. Visual appearances of foods are a significant part of organoleptic acceptance of a food product and products may also be able to heighten the interest of a child. For example, a food product may have dispersed therein recognizable shapes with contrasting colors, which can be very attractive for children and others, especially chocolate with fat-based inclusions of recognizable shapes of different colors. Thus, the retention of shape is particularly important when the products have a recognizable shape such as, for example, animals, cartoon characters, stars, hearts, letter, numbers, etc. See, specification, page 5, [0021]. In contrast, *Woznicki* fails to disclose or suggest each and every element of the present claims.

*Woznicki* fails to disclose or suggest a film coating comprising a supplementary ingredient selected from the group consisting of minerals, vitamins, prebiotics, probiotics, and combinations thereof as is required, in part, by independent Claim 1. The Patent Office also admits that *Woznicki* fails to disclose or suggest a film coating having a thickness from 1 micrometer to 1 millimeter. See, Office Action, page 3, line 23-page 4, line 1. Instead, *Woznicki* is entirely directed toward providing a film coating on a pharmaceutical tablet, food, confectionery form and the like by coating them with polydextrose. See, *Woznicki*, Abstract. *Woznicki* fails to mention the presence of any supplementary ingredients present in a film, let alone the supplementary ingredients required, in part, by the present claims. *Woznicki* also fails to even mention that the film coating has a certain thickness, let alone a thickness of from 1 micrometer to 1 millimeter. Further, *Woznicki* is not even concerned with the retention of shapes that may be provided to a product coated with the films of the present disclosure. For at least the

reasons set forth above, Applicants respectfully submit that *Woznicki* fails to disclose or suggest each and every element of the present claims.

Accordingly, Applicants respectfully request that the rejection of Claims 1-4, 6-8 and 18-19 under 35 U.S.C. §103 be reconsidered and withdrawn.

In the Office Action, Claim 5 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Woznicki* in view of U.S. Patent No. 6,274,162 to Steffenino et al. ("*Steffenino*"). Applicants respectfully submit that the patentability of independent Claim 1 as previously discussed renders moot the obviousness rejection of Claim 5 that depends from Claim 1. In this regard, the cited art fails to teach or suggest the elements of Claim 5 in combination with the novel elements of Claim 1.

Accordingly, Applicants respectfully request that the rejection of Claim 5 under 35 U.S.C. §103 be reconsidered and withdrawn.

In the Office Action, Claims 9-10, 13, 15 and 20 are rejected under 35 U.S.C. §103(a) as being unpatentable over "Chewy Chocolate-Chip Cookies" by Cooking Light ("*Cooking Light*") in view of *Woznicki*. Claims 10-12 and 14 are rejected under 35 U.S.C. §103(a) as being unpatentable over "Black Forest Fudge" by Bon Appétit ("*Bon Appétit*") in view of *Woznicki*.

Independent Claims 9, 10 and 15 have been amended to recite, in part, a film coating comprising a supplementary ingredient selected from the group consisting of minerals, vitamins, prebiotics, probiotics, and combinations thereof. The amendment does not add new matter. The amendment is supported in the specification at, for example, page 6, [0029]. As discussed above, Applicants have found that the presently claimed film-coated fat-based confectionery products can be dispersed into and/or scattered onto a food product such as chocolate, baked products, etc. The products do not deform when submitted to temperatures higher than ambient, the coating does not crack upon heating, and colour does not bleed from the coating into the food product. See, Preliminary Amendment, page 4, [0014]. Further, by providing a supplementary ingredient in the film, Applicants are able to deliver beneficial ingredients to a consumer of the products of the present disclosure. In contrast, Applicants respectfully submit that the cited references fails to disclose each and every element of the present claims.

*Woznicki*, *Cooking Light*, and *Bon Appétit* all fail to disclose or suggest a film coating comprising a supplementary ingredient selected from the group consisting of minerals, vitamins, prebiotics, probiotics, and combinations thereof as required, in part, by independent Claims 9-10

and 15. The Patent Office also admits that *Woznicki*, *Cooking Light*, and *Bon Appétit* all fail to disclose or suggest a film coating having a thickness from 1 micrometer to 1 millimeter as required, in part, by independent Claims 9-10 and 15. See, Office Action, pages 6-7. Instead, *Woznicki* is entirely directed toward providing a film coating on a pharmaceutical tablet, food, confectionery form and the like by coating them with polydextrose. See, *Woznicki*, Abstract. At no place in the disclosure does *Woznicki* suggest that a confectionery product may a film coating having a thickness from 1 micrometer to 1 millimeter as required, in part, by independent Claims 9-10 and 15.

*Cooking Light* is entirely directed toward a recipe for manufacturing Chewy Chocolate-Chip Cookies. See, *Cooking Light*. The entire recipe discusses the ingredients and preparation method for producing same. See, *Cooking Light*. At no place in the disclosure does *Cooking Light* suggest that a confectionery product may comprise a film coating having a thickness from 1 micrometer to 1 millimeter as required, in part, by independent Claims 9-10 and 15. *Bon Appétit* is entirely directed toward a recipe for manufacturing Black Forest Fudge that derives its name from the popular German cake flavored with chocolate and cherries. See, *Bon Appétit*, lines 3-4. The entire recipe discusses the ingredients and preparation method for producing same. See, *Bon Appétit*. At no place in the disclosure does *Bon Appétit* suggest that a confectionery product may comprise a film coating having a thickness from 1 micrometer to 1 millimeter as required, in part, by independent Claims 9-10 and 15. Accordingly, neither *Cooking Light* nor *Bon Appétit* remedy the deficiencies of *Woznicki*.

The Patent Office alleges that the amount of film coating on the fat-based confectionery product and film thickness would have been considered a result effective variable by one of ordinary skill in the art at the time of the invention. See, Office Action, page 4, lines 1-4. However, Applicants respectfully disagree and submit that the thickness of the film coating would be understood as providing heat stability and heat resistance to the confectionery product underlying the film coating. For at least the reasons discussed above, Applicants respectfully submit that the cited references fail to disclose each and every element of the present claims.

Accordingly, Applicants respectfully request that the rejection of Claims 9-15 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same. In the event there remains any impediment to allowance of the claims that could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

K&L GATES LLP

BY 

Robert M. Barrett  
Reg. No. 30,142  
Customer No.: 29157  
Phone No. 312-807-4204

Dated: January 28, 2010